



Department of Defense **INSTRUCTION**

January 8, 1995
NUMBER 6025.5

HA

SUBJECT: Personal Services Contracts (PSCs) for Health Care Providers (HCPs)

References: (a) Instruction 6025.5, "Personal Services Contracting Authority for Direct Health Care Providers," February 27, 1985 (hereby canceled)
(b) Federal Acquisition Regulation, Part 37, title 48, current edition
(c) Defense FAR Supplement, Part 237, title 48, current edition
(d) Sections 1091 and 1096 of title 10, United States Code
(e) Section 102 of title 3, United States Code
(9) Section 2671, et seq., of title 28, United States Code

A. REISSUANCE AND PURPOSE

This Instruction reissues reference (a) to update the policy, responsibilities, and procedures for implementing the authority for PSCs for HCPs.

B. APPLICABILITY AND SCOPE

This Instruction applies to:

1. The Office of the Secretary of Defense and the Military Departments.
2. PSCs for HCPs awarded under references (b) and (c), and Section 1091 of reference (d). Services provided under the Military-Civilian Health Services Partnership Program (reference (d)) are not provided under PSCs and are not covered by this Instruction.

C. DEFINITIONS

1. Health Care Providers (HCPs). Health services personnel who participate in clinical patient care. That does not include personnel whose duties are primarily administrative or clerical, nor personnel who provide maintenance or security services.
2. Personal Services Contract (PSC). A contract that, by its expressed terms or as administered, makes the contractor personnel appear, in effect, to be Government employees.

D. POLICY

It is DoD policy that:

1. When in-house sources are insufficient to support the medical mission of the Military Departments or in using sound business judgment it is more efficient to do so, PSCS maybe executed for physicians and other HCPS.

2. PSCS help mission accomplishment, maximize beneficiary access to military treatment facilities (MTFs), maintain readiness capability, reduce the use of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), and enhance the patient and provider relationship.

3. PSCS shall be subject to the same quality assurance, risk management, credentials review, and clinical privileging standards, including licensure, as those required of military and civil service HCPS.

4. All PSCS must be cost effective when compared to any other method (e.g., military and civil service, etc.) available to the MTF commander in providing the required healthcare. If the MTF commander is unable to obtain the required services through other more cost-effective means, the cost to the Government to provide the services through a PSC must be less than, or equal to, the projected Government cost under CHAMPUS for the same services.

5. PSC is the preferred type of contract when: the descriptive elements of the services to be provided, as stated in FAR Subpart 37.104 (reference (b)), have essentially the same attributes as are present for services performed by military or civil service HCPS of the same type (e.g., physicians and nurses, etc.) at the same facility; and the services of the military, civil service, and PSC HCPS of the same type are to be integrated in predominant respects.

6. The rights, benefits, and compensation of PSC contractors providing services under PSCS shall be determined solely in accordance with the PSC.

7. In no case shall the total amount of compensation paid to an individual in any year under a PSC exceed the full time equivalent rate of 200,000 dollars each year, except that this cap may be adjusted to equal any change in the amount of annual compensation (excluding the allowances for expenses) specified in Section 102 of 3 U.S.C. (reference (e)).

8. The existence of an employer-employee relationship created by a PSC shall result generally in the treatment of a PSC HCP similar to a DoD employee for many purposes. Included in this similar treatment is that Federal Tort Claims Act (reference (f)) claims alleging negligence by a PSC HCP shall be processed by the Department of Defense as claims alleging negligence by DoD military or civil service employees. As a result, the PSC HCP is not required to maintain medical malpractice liability insurance.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense for Health Affairs shall:

- a. Be responsible for monitoring the PSC program.
- b. Review the procedures established by the Military Departments to ensure the cost effectiveness and/or neutrality of PSCs.
- c. Modify or supplement this Instruction, as needed.

2. The secretaries of the Military Departments shall:

- a. Be responsible for the management, consistent with this Instruction, of the PSC program.
- b. Establish a methodology, including audit procedures, to ensure that all PSCS entered into are cost effective and/or neutral, when compared to other means of delivering the needed healthcare.


F. PROCEDURES

1. The procedures established in DFARS, Subpart 237.104 (reference (c)) are applicable to selections of PSCS over the small purchase threshold that are set aside solely for competition between, and award to, individuals who will be directly providing the personal services. Those procedures are not applicable to all other PSCS (e.g., those awarded to corporations), which are subject to the full and open competition requirements of the FAR (reference (b)), reference (c) and other DoD and service specific regulations.
2. Prorated compensation based on hourly, daily, or weekly rates maybe awarded when a contractor's services are not required on a full-time basis.
3. Each PSC must contain language specifically stating:
 - a. That the contract is a personal services contract and that the contract is intended to create an employer-employee relationship between the Government and *the* individual HCPs.
 - b. That the performance of the individual HCP(s) under the PSC is subject to day-to-day supervision and control by healthcare facility personnel comparable to that exercised over military and civil service HCPS engaged in comparable work; and
 - c. That any personal injury claims alleging negligence by the individual HCPS within the scope of the HCP's performance of the PSC shall be processed by DoD as claims alleging negligence by DoD military or civil service HCPs; and

d. The PSC does not create an employer-employee relationship between the Government and any corporation, partnership, business association or other party or legal entity with which the individual HCP(s) maybe associated.

G. EFFECTIVE DATE

This Instruction is effective immediately.

A handwritten signature in black ink, appearing to read "Edward D. Martin/for".

Stephen C. Joseph, M.D., M.P.H.^W
Assistant Secretary of Defense for Health Affairs